

### REMARKS

In the Office Action dated October 21, 2005, claims 1-31 were presented for examination. Claims 1-31 were rejected under 35 U.S.C. §102(b) as being anticipated by *Kermani*, U.S. Patent No. 6,163,831.

Applicant hereby incorporates the remarks pertaining to *Kermani* presented in the Response to the Fourth Office Action filed August 5, 2005 for the pending application. The following remarks are provided in support of the pending claims and responsive to the Office Action of May 5, 2005 for the pending application.

In the Office Action dated October 21, 2005, the Examiner assigned to the application rejected claims 1-31 under 35 U.S. C. §102(e) as being anticipated by *Kermani* ('831). As noted in the Response to the Fourth Office Action, the *Kermani* patent ('831) relates to hardware elements for controlling access to shared synchronous memory. In *Kermani*, the agents 100, 104, 106, 108 are equally placed in a structure with each agent sharing access to synchronous memory. Each of agents may submit a memory access request wherein "a winning agent is preferably selected based on a priority level assigned to each of the requesting agents." Col. 4, lines 50-52. The Examiner equivocates a priority of *Kermani* to the hierarchy as claimed by Applicant. However, these two terms are not synonymous. In the communication filed July 21, 2004, a hierarchy was defined as an organizational technique in which items are layered or grouped to reduce complexity. A priority is defined as "superiority in rank, position, or privilege"<sup>1</sup>, and a rank is defined as a "position in a hierarchy."<sup>2</sup> Accordingly, a hierarchy cannot be equated with a priority.

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<sup>1</sup>Merriam-Webster OnLine Dictionary, attached as Exhibit A.

<sup>2</sup>The New Lexicon Webster's Dictionary Of The English Language, page 827, attached as Exhibit B.

Additionally, a hierarchical structure does not necessitate the assignment of priorities to the elements within that structure. Conversely, a priority is an ordering of elements that does not necessitate the creation of a hierarchical structure. There is no provision in the system of *Kermani* for ordering the agents using their complexity into any form of a hierarchical structure. By definition, such an ordering is required in order to have a hierarchical system. Accordingly, *Kermani* does not teach the hierarchical organization of the processors as claimed by Applicant.

Furthermore, in Applicant's invention the placement of the processor requesting the lock in view of the hierarchical organization of the processors is determinative of the order of the processing of the lock between all elements within the hierarchy. The lock of *Kermani* is responsive to a priority level assigned to the requesting agent. See Col. 4, lines 51-52. There is no provision in *Kermani* for processing a lock responsive to a hierarchy, especially since *Kermani* does not organize its agents in a hierarchy. *Kermani* uses a linear arrangement of agents to grant locks based upon a priority level assigned to the agents. This is not processing a lock responsive to a hierarchical structure, it is processing a lock responsive to a ranking within a linear arrangement that only provides for the priority of an agent in relation to other agents. Accordingly, the locks of *Kermani* are not responsive to a hierarchy of processors, as the injection of such a hierarchical system in *Kermani* would in fact contradict *Kermani*'s own stated system of assigning locks based upon a priority level assigned to the agents.

With respect to the claimed lock of Applicant's invention, each of Applicant's independent claims 1, 13, and 22 includes a limitation that the lock is either an interruptible lock or a lock which waits using only local memory. The lock of *Kermani* is not a lock which waits using only local memory. As noted by the Examiner in the Fifth Office Action, page 4, "As *Kermani* notes at Col. 11, lines 47-67 discloses the arbiter provides the ability for any agent to lock its ownership of the shared memory (local memory)." In fact, the lock of *Kermani* waits on an arbiter or a pre-arbiter - the lock does not wait on memory. Applicant claims their lock as a lock which waits using only local memory. Accordingly, Applicant's invention utilizes only local memory while *Kermani* does not, and thereby functions differently than *Kermani*.

With respect to the limitation of an interruptible lock, Applicant respectfully disagrees with the Examiner extremely broad interpretation of *Kermani*. As noted in the response to the Fourth Office Action, *Kermani* implements use of a pre-arbiter and “then waits until the current owning agent experiences a lapse of, e.g. , one clock cycle in its consecutive memory access.” See Col. 11, lines 58-59. A lapse is defined as “the termination of a right or privilege through disuse or failure to follow appropriate procedures.”<sup>3</sup> In *Kermani*, a waiting agent can access shared memory when another agent has terminated it’s lock on the shared memory. This is not interrupting a lock, this is accessing a lock that is otherwise available as it is not in a state of being held by another agent. Similarly, this is not an interruptible lock, as based upon the definition of the word “lapse” this is a lock that has been terminated and is available. Accordingly, there is no provision in *Kermani* for an interruptible lock.

Under the law of anticipation, “[f]or a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference. *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988). As mentioned above, *Kermani* does not show all of the elements as claimed by Applicant in pending claims 1-31. Specifically, *Kermani* does not show processors organized in a hierarchy, an interruptible lock and/or a lock which waits using only local memory, or processing the lock responsive to the hierarchy, as claimed by Applicant. “A previous patent anticipates a purported invention only where, except for insubstantial differences, it contains all of the same elements operating in the same fashion to perform an identical function.” *Saunders v. Air-Flo Co.*, 646 F.2d 1201, 1203 (7<sup>th</sup> Cir. 1981) citing *Popeil Brothers, Inc. V. Schick Electric, Inc.*, 494 F.2d 162, 164 (7<sup>th</sup> Cir. 1974) (holding patents were not invalid as being anticipated by or obvious in light of prior art). *Kermani* does not anticipate the invention of Applicants based upon the legal definition of anticipation. Although the prior art cited by the Examiner relates to a processor and a lock associated therewith, *Kermani* fails to show each and every element as presented in

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<sup>3</sup>Compact Oxford English Dictionary, attached as Exhibit C.


Applicant's claimed invention. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 1-31 and provide allowance of this application.

Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner indicate allowability of claims 1-31, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

In light of the foregoing remarks, all of the claims now presented are in condition for allowance, and Applicants respectfully request that the outstanding rejections be withdrawn and this application be passed to issue.

Respectfully submitted,


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## priority

One entry found for priority.

Main Entry: **priority**

Pronunciation: prī-'or-ē-tē, -'ār-

Function: *noun*

Inflected Form(s): *plural -ties*

1 a (1) : the quality or state of being *prior* (2) : precedence in date or position of publication — used of taxa b (1) : superiority in rank, position, or privilege (2) : legal precedence in exercise of rights over the same subject matter 2 : a preferential rating, *especially* : one that allocates rights to goods and services usually in limited supply <that project has top *priority*>

3 : something given or meriting attention before competing alternatives

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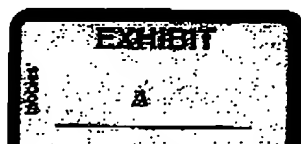
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## Compact Oxford English Dictionary

### **lapse**

• **noun** 1 a brief failure of concentration, memory, or judgement. 2 a decline from previously high standards. 3 an interval of time. 4 Law the termination of a right or privilege through disuse or failure to follow appropriate procedures.

• **verb** 1 (of a right, privilege, or agreement) become invalid because it is not used, claimed, or renewed. 2 cease to follow the rules and practices of a religion or doctrine. 3 (**lapse into**) pass gradually into (a different, often worse, state or condition).

— ORIGIN Latin *lapsus*, from *labi* 'to slip or fall'.

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